

ENTERED

December 22, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**EMILY SEAGO,
"Plaintiff,"

v.

KILOLO KIJAKAZI, Acting Commissioner
of Social Security,
"Defendant."§
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Civil Action No. 1:21-cv-00136

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

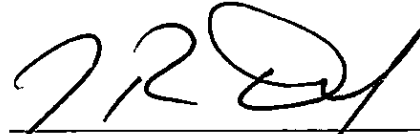
Before the Court are these pleadings: Plaintiff's Motion for Summary Judgement ("PMSJ") (Dkt. No. 11), Defendant's Motion for Summary Judgement and Response to Plaintiff's Motion for Summary Judgement ("MSJ") (Dkt. No. 12), the "Magistrate Judge's Report and Recommendation" ("R&R") (Dkt. No. 25), and Plaintiff's "Objections to Magistrate Judge's November 15, 2022 Report and Recommendation (R&R)" ("Objections") (Dkt. No. 29). The R&R recommends (1) denying the PMSJ (Dkt. No. 11), (2) granting Defendant's MSJ (Dkt. No. 12); and (3) affirming the decision of Defendant.

"The district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). In respect to the portions of the R&R, to which there were no objections, the district court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Finding no clear error, abuse of discretion, or finding contrary to law, the portions of the R&R which were not objected to are **ADOPTED**.

Plaintiff's objections are the same as the arguments raised in her PMSJ (Dkt. No. 11). Dkt. No. 29. As the R&R analyzed, when then Acting Former Commissioner Nancy Berryhill ("Berryhill") appointed the Administrative Law Judge ("ALJ") who adjudicated Plaintiff's claim, Berryhill did not violate the Federal Vacancies Reform Act ("FVRA"), therefore the ALJ's appointment was constitutional. Thus, Plaintiff's objections are **OVERRULED**.

For the reasons above, the R&R (Dkt. No. 25) is **ADOPTED**. The PMSJ (Dkt. No. 11) is **DENIED**. Defendant's MSJ (Dkt. No. 12) is **GRANTED**. Defendant's decision is **AFFIRMED**.

Signed on this 22nd day of December, 2022.

A handwritten signature in black ink, appearing to read 'R. Olvera', written over a horizontal line.

Rolando Olvera
United States District Judge